Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

In the Matter of	)	
	)	
Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs	)	WC Docket No. 18-89

REPLY COMMENTS OF HUAWEI TECHNOLOGIES CO., LTD., AND HUAWEI TECHNOLOGIES USA, INC.

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EXECUTIVE SUMMARY

The Commission's proposal to force carriers to remove and replace currently operational equipment is both legally unsound and factually unjustified. It is legally unsound because it disregards the clear bounds of the Constitution and the Commission's own statutory authority. And it is factually unjustified because its protectionist and overbroad approach would impose unreasonably high costs, and would represent an irrational and highly inefficient way to address purported security risks, borrowing the worst elements of various supply chain security proposals considered by the U.S. government.

These points are confirmed by the comments filed in response to the Further Notice of Proposed Rulemaking. Commenting parties, including affected carriers, have correctly identified grave defects with the proposed rule on retroactivity and takings grounds. "The proposal is inconsistent with assurances given to the industry in the *Supply Chain R&O*" in November. (Puerto Rico Telephone Company ("PRTC").) "Carriers … have a vested property interest in already-purchased equipment and mandating its removal would deny 'all economically beneficial or productive use' or all 'economically viable use.'" (PRTC.) And "[i]f carriers are required to remove and replace existing equipment, the value of their investments would be, quite clearly, adversely affected." (LATAM.)

Commenting parties have also correctly rejected the Commission's assertion of authority under the Communications Assistance for Law Enforcement Act ("CALEA") to promulgate its proposed rule. "Nothing in the text of [CALEA] or the legislative history indicates or suggests that Congress intended to give the Commission the authority to regulate industry's supply chain decisions." (LATAM.) CALEA "does not support the FCC's regulation of supply chains and equipment." (CTIA.) And the law "cannot be stretched to provide the Commission broad authority to regulate a carrier's [purchasing] decisions." (USTelecom.)

Nor can the Commission promulgate its proposed rule under the Communications Act as an exercise of national security power. Trade associations representing major telecommunications carriers in the United States, like CTIA, NCTA, and USTelecom, all urge the Commission to refrain from acting in the area of national security. "[A]s a regulatory agency, the [Commission] may not have the same experience, expertise, or resources as other agencies to designate national security threats." (CTIA.) "Unilateral determinations made by the Commission in a vacuum would be dangerous and counterproductive." (USTelecom.) And "[n]umerous other federal efforts are already underway to address supply chain risks, and contradictory regulations could have serious unintended consequences." (NCTA.)

Finally, commenting parties have confirmed the simple reality that the Commission's proposed rule is overbroad, imposes extreme burdens, and lacks any reasonable cost-benefit justification. The Commission must carefully consider *all* costs associated with an equipment removal mandate, including the "potential unforeseen effects of upending the market for communications network equipment and components." (NCTA.) "Such a step is rife with the potential for unintended consequences, including raising network equipment costs (and their attendant higher prices to consumers), delaying or burdening network upgrades (thereby deferring the benefits of innovation and advanced services), and possible distortions of the competitive marketplace[.]" (NCTA.) "[T]he rip and replace proposal has a disproportionate impact on smaller entities, which rely on critical USF dollars for the provision of telecommunications service in insular and rural areas." (PRTC.) Instead of *upgrading* their telecommunications networks, carriers will need to focus their manpower and financial resources to replace equipment that covers "large swaths of land," construct and deploy towers in "hard-to-reach locations that may not be accessible at certain times of the year," and test and adjust new equipment to integrate it into their networks

on the fly. (WTA.) The record likewise demonstrates the high costs imposed by the proposed rule: "[T]he impact of a delay in 5G deployment is substantial. Depending on the extent of the delay, the present discounted value of losses to the U.S. economy from Huawei's absence varies from approximately $104 billion (from a 6-month delay) to approximately $241 billion (from an 18-month delay) over the duration of delay." (Aron Report I.) "A delay of 18 months would result in the loss of … 50.3 thousand jobs in 2020." (Aron Report I.)

In short, the Commission's proposed rule is unlawful and irrational and will cause immense harm to the U.S. communications marketplace and the economy without truly advancing supply chain security. The Commission should terminate the proceeding immediately.

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Huawei Technologies Co., Ltd., and Huawei Technologies USA, Inc. (collectively, "Huawei"), by their undersigned counsel, submit these reply comments to the Federal Communications Commission ("FCC" or "Commission") in the above-captioned docket. In particular, Huawei responds to comments on the Commission's Further Notice of Proposed Rulemaking[1] ("FNPRM"), which seeks to (1) require eligible telecommunications carriers ("ETCs") receiving Universal Service Fund ("USF") support to remove and replace equipment or services produced or provided by certain companies that allegedly pose national security threats to the integrity of communications networks or the communications supply chain ("covered equipment") within their networks and (2) extend the prohibition on the use of covered equipment imposed by the Commission's prior USF rule to all carriers.

[1] *See Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs*, Report and Order, Further Notice of Proposed Rulemaking, and Order, WC Docket No. 18-89, PS Docket Nos. 19-351, 19-352, 34 FCC Rcd 11423 (2019) ("Order and/or FNPRM").

I. The Record Shows the Commission's Legal Analysis of the Proposed Rule is Flawed

A. In Addition to the Lack of Legal Authority, the Proposed Rule Would Result in Regulatory Takings, Due Process Violations, and Unlawful Retroactivity

The record shows that the Commission lacks the legal authority to enact the proposed rule to require carriers receiving USF support to remove and replace covered equipment within their networks. As Huawei has elaborated at length throughout this proceeding, the Communications Act's USF principles do not allow the Commission to consider potential national security interests in the context of its USF programs. In short, the Commission cannot read the Communications Act, either Section 254(b) or Section 201(b) to contain any principle related to national security, network security, or "[e]nsuring the safety, reliability, and security of the nation's communications networks."[2] In addition to the lack of textual authority within the Communications Act, commenters support Huawei's arguments that the proposed rule also is legally infirm because it would result in regulatory takings, due process violations, and unlawful retroactivity.

Puerto Rico Telephone Company ("PRTC") draws the Commission's attention to the disparity between the reasoning for the adopted ban on covered equipment and the reasoning for the proposed rule.[3] In adopting the ban, the "Commission explicitly stated that the rule was 'prospective in effect' and that it '[did] not prohibit the use of existing services or equipment already deployed or in use.'"[4] The Commission used this reasoning to (wrongly) reject arguments regarding due process and regulatory takings on the basis that the adopted rule would only be applied "prospectively and does not require carriers to remove or stop using any already purchased

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[2] Huawei FNPRM Comments at 2-13.

[3] PRTC Comments at 2-3.

[4] *Id.* at 2 (*quoting* Order, 34 FCC Rcd at 11456, ¶ 85).

equipment or services."[5] However, PRTC correctly asserts that adopting the proposed rule would "accomplish exactly what [the Commission] stated in the [Order] it was not doing."[6] This revives all the legal problems the Commission attempted – but failed – to address in the Order. "For instance, carriers do have a vested property interest in already-purchased equipment and mandating its removal would deny 'all economically beneficial or productive use' or all 'economically viable use.'"[7]

PRTC is not alone in questioning the Commission's dubious legal analysis. Latam Telecommunications ("LATAM") raises the same criticism of the Commission's proposed rule.[8] The proposed rule's requirement to "remove and replace legally purchased equipment and services raises concerns about the impact of certain regulatory actions on private investment."[9] Specifically, LATAM attacks the proposed rule as unlawfully retroactive.[10] LATAM points out that the proposed rule would be "particularly injurious" as it would penalize prior investment "that was made consistent with all U.S. laws and regulations."[11] "If carriers are required to remove and replace existing equipment, the value of their investments would be, quite clearly, adversely affected" and the Commission's action would be unlawfully retroactive.[12]

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5 *Id.* at 2-3 (*quoting* Order, 34 FCC Rcd at 11458, 11463-64, ¶¶ 93, 105).

6 *Id.* at 3.

7 *Id.* at 3 (*quoting Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992)).

8 LATAM Comments at 2-7.

9 *Id.* at 3.

10 *Id.* at 3; *and see* Huawei FNPRM Comments at 29-33.

11 LATAM Comments at 4.

12 *Id.* at 4.

B. The Commission Cannot Rely on CALEA to Expand the Proposed Rule

The comments also show why the Commission cannot rely on the Communications Assistance for Law Enforcement Act ("CALEA") to expand the proposed rule to all carriers.[13] CALEA is intended to preserve the ability of law enforcement agencies to conduct electronic surveillance – "the statute is intended to aid *lawful* surveillance."[14] Expanding the ban and proposed rule would run contrary to the statutory purpose of CALEA.[15]

As CTIA explains, CALEA's "tightly focused text does not support the FCC's regulation of supply chains and equipment."[16] And in fact, the statute explicitly does not allow "require[ing] any specific design of equipment, facilities, services, features, or system configurations" and it precludes "prohibit[ing] the adoption of any equipment, facility, service, or feature by any provider of a wire or electronic communication service, any manufacturer of telecommunications equipment, or any provider of telecommunications support services."[17] CTIA further explains that CALEA purposefully does not reach information services or the equipment, facilities or services that support private networks and interconnection.[18] CTIA, among others, concludes that CALEA cannot be used to prohibit equipment or services from use in United States communications networks.[19]

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[13] *See* USTelecom Comments at 15-17; LATAM Comments at 5-7; CTIA Comments at 14-18; CompTIA Comments at 3; Huawei FNPRM Comments at 18-29.

[14] CompTIA Comments at 3.

[15] *Id.*; *and see* LATAM Comments at 5-6; USTelecom Comments at 16; CTIA Comments at 17.

[16] CTIA Comments at 15.

[17] *Id.* at 15-16 (*quoting* 47 U.S.C. § 1002(b)(1)).

[18] *Id.* at 16.

[19] *Id.* at 16; *and see* LATAM Comments at 6-7; USTelecom Comments at 16; CompTIA Comments at 3, n.9.

USTelecom agrees, adding that CALEA "does not and was never intended to provide the Commission authority to regulate the telecommunications supply chain."[20] USTelecom stresses that CALEA "cannot be stretched to provide the Commission broad authority to regulate a carrier's supply chain decisions."[21] CTIA further argues that "the notion that any Commission action that reduces the risk of surreptitious surveillance directly implements CALEA would invite limitless future regulation."[22] Yaana Technologies adds that whatever authority the Commission has under CALEA comes with an "obligation to uniformly apply the 5G [Lawful Interception (LI) and Retained Data (RD)] technical standards already adopted through industry-government collaboration, to all suppliers of equipment required to meet CALEA requirements."[23] The Commission cannot use CALEA to justify expanding the proposed rule as it would be contrary to the plain language, legislative purpose, and any reasonable interpretation of the statute.

C. The Commission Cannot Rely on Sections 214 and 316 to Expand the Proposed Rule

Only the Rural Wireless Association ("RWA") pointed to statutory authority beyond CALEA as a purported basis to expand the proposed rule to all carriers by attempting to shoehorn the Commission's expansion of the proposed rule into the Commission's authority to condition certificates and licenses for wireline and wireless carriers.[24] However, neither Section 214 nor Section 316 provides authority for the Commission's proposed ban or a mandate requiring the removal and replacement of communications equipment and services.

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[20] USTelecom Comments at 16.

[21] *Id.* at 16.

[22] CTIA Comments at 17 (internal quotations omitted); *and see* Huawei FNPRM Comments at 25-26.

[23] Yaana Technologies Comments at 2, para. 3.

[24] RWA Comments at 5-8.

RWA's argument is based on the incorrect interpretation that the "public interest" would be served by modifying existing Section 214 certificates and Section 316 licenses to prohibit the use of covered equipment to "protect[] [the United States] national security."[25] As Huawei has explained, this is a fundamentally flawed view of the Communications Act's use of the term and the Commission's authority to regulate in the "public interest."[26] The Supreme Court specifically held that the phrase "public interest" in the Communications Act "is to be interpreted by its context," and "is not to be interpreted as setting up a standard so indefinite as to confer an unlimited power."[27] Accordingly, when the Commission issues rules, those rules must rest on specific grants of authority as defined by the relevant section of the Communications Act—not on paeans to the "public interest." Moreover, RWA, without any support, asserts that protecting national security is included within the context of Sections 214 and 316. But it is not.[28]

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[25] RWA Comments at 6-7.

[26] Huawei FNPRM Comments at 2-13.

[27] *Nat'l Broad. Co.* v. *United States*, 319 U.S. 190, 216 (1943); *cf. NAACP* v. *Fed. Power Comm'n*, 425 U.S. 662, 670 (1976) (The Court has "consistently held that the use of the words 'public interest' in a regulatory statute is not a broad license to promote the general public welfare. Rather, the words take meaning from the purposes of the regulatory legislation.").

[28] RWA states that "it is well established that protecting our national security clearly meets the public interest test" and cites two cases for the proposition: (1) *Mobile Relay Assocs. v. FCC*, 457 F.3d 1 (D.C. Cir. 2006); and, (2) *Cal. Metro Mobile Commc'ns, Inc. v. FCC*, 365 F.3d 38 (D.C. Cir. 2004). RWA Comments at 6, n.14. However, neither case holds that Section 316 can be used to modify licenses due to national security concerns. In both cases, the court ruled the Commission can make license modifications to prevent harmful interference to services the Commission finds are in the public interest.

Specifically, *Mobile Relay Assocs.* found a Commission rebanding decision was reasonable, because the Commission sought to segregate incompatible mobile communications architectures to reduce interference with high-site public safety systems pursuant to its public interest mandate. *Mobile Relay Assocs. v. FCC*, 457 F.3d at 11.

Cal. Metro found that a modification to an existing radio service license was in the public interest to prevent interference with a prior Pacific Gas & Electric licensed radio service. *Cal. Metro*, 365 F.3d at 42-43. Neither case even addressed whether national security concerns could be considered as part of the public interest analysis.

RWA also ignores the plain text of the statute. Section 214(c) states:

> The Commission shall have power to issue such certificate … and may attach *to the issuance of the certificate* such terms and conditions as in its judgment the public convenience and necessity may require.[29]

Section 214(c) does not, as RWA contends, permit the Commission to attach additional obligations to a certificate following the issuance of that certificate. RWA points to no example where the Commission has used Section 214 as an independent authority to adopt a new requirement for existing certificate holders. Indeed, the D.C. Circuit in *MCI Telecommunications Corp.* examined the Commission's authority to enact conditions when *issuing* certificates under Section 214.[30] The court did not endorse nor did the Commission attempt regulation of specialized carrier services by modifying existing Section 214 certificates.[31] To the contrary, the court found that the "future impact of specialized carrier service offerings other than those immediately at hand in the [Specialized Carrier rulemaking] should be resolved in other proceedings, in tariff proceedings, upon license renewal, or by further rulemaking. Strikingly absent from this list is a mention of further Section 214 proceedings."[32] Thus, while the Commission could impose new requirements on carriers with Section 214 certificates, it would have to point to independent rulemaking authority for those requirements outside of Section 214 or adopt the conditions consistent with Section 214 upon issuance or transfer of a certificate. The Commission cannot, as RWA suggests, use Section 214's "terms and conditions" authority as an independent ground to expand the proposed rule to all carriers.

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[29] 47 U.S.C. § 214(c) (emphasis added).

[30] *MCI Telecommunications Corp. v. FCC*, 580 F.2d 590, 597 (D.C. Cir. 1978).

[31] *Id.*, 580 F.2d at 597.

[32] *Id.*, 580 F.2d at 597, n.20 (*quoting MCI Telecommunications Corp. v. FCC*, 561 F.2d 365, 379 (D.C. Cir. 1977)).

Likewise, Section 316(a)(1) requires a finding that the modification of a wireless license "will promote the public interest, convenience, and necessity," 47 USC § 316(a)(1), but RWA points to no authority for the Commission to make national security decisions within the context of Section 316's public interest considerations.[33] Just as with Section 214, the Commission cannot use Section 316 as an independent authority to expand the proposed rule to all carriers.

II. Even if the FCC Had Statutory Authority, It Should Not Act Unilaterally to Mandate Replacement and Removal of Telecommunications Equipment

As Huawei has explained, Congress and the President have national security responsibilities, but no law—not the Constitution, not the Communications Act, and not any other statute—empowers the Commission to make policies in furtherance of national security.[34] The Commission itself has acknowledged that "other federal agencies have specific expertise" in national security.[35] As an independent regulatory agency, the Commission is not permitted to "impede the President's ability to perform his constitutional duty."[36] Therefore, even if the Commission had statutory authority to adopt its proposed mandate, which it does not, the Commission should not act unilaterally to force ETCs to remove and replace covered equipment or expand any such requirement to all telecommunications carriers.

National security demands a government-wide approach to supply chain security, and therefore U.S. national security requires that the Commission permit the Executive Branch

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[33] *See supra* n.28.

[34] *See* Comments of Huawei, WC Docket No. 18-89, at 17-22 (filed June 2, 2018); Huawei Ex Parte, WC Docket No. 18-89, at 19-20 (filed Nov. 14, 2019). *See also Ziglar* v. *Abbasi*, 137 S. Ct. 1843, 1861 (2017) (citing U.S. Const. art. I, § 8, art. II, §§ 1, 2) ("National-security policy" is "the prerogative of the Congress and President.").

[35] Order, 34 FCC Rcd at 11429-30, ¶ 19.

[36] *Morrison* v. *Olson*, 487 U.S. 654, 691 (1988).

agencies with expertise to pursue a holistic, inter-agency approach to addressing such risks. As several commenters have pointed out, Executive Branch agencies with national security expertise, and which act subject to the will and direction of the President and consistent with lawful directives from Congress, are actively considering means to identify and address security risks in the telecommunications supply chain that must be accounted for before the Commission takes any further action in this proceeding.[37]

Efforts to identify and address risks to the telecommunications supply chain are in various stages of development, and "[t]he public interest would be best served by a unified federal government approach to communications network supply chain security efforts."[38] Ongoing efforts by the Executive Branch to address supply chain risks include (but are not limited to) DOD's implementation of a Cybersecurity Maturity Model Certification program for defense contractors, the Federal Acquisition Security Council's implementation of the Federal Acquisition Supply Chain Security Act of 2018 (the "Supply Chain Security Act"),[39] reform to the U.S. regime for foreign investment and export controls,[40] the ICT Supply Chain Risk Management Task Force public-private partnership overseen by Department of Homeland Security ("DHS") and its Cybersecurity and Information Security Agency ("CISA"), and ongoing revisions of the National

[37] These reply comments should not be construed as any concession by Huawei regarding the constitutionality or legality of particular actions taken or under consideration by the Executive Branch and/or Congress.

[38] NCTA Comments at 6.

[39] *See* Huawei Ex Parte, WC Docket No. 18-89 (filed Feb. 15, 2019) (explaining that the Federal Acquisition Supply Chain Security Act of 2018 requires a coalition of agencies to develop government-wide criteria and rules for identifying, assessing, and mitigating supply chain risks posed by any global supplier and provides a process for the for issuing exclusion orders following notice and an opportunity for the supplier to oppose an exclusion).

[40] *See* USTelecom Comments at 7-11; TIA Comments at 6-8.

Institute of Standards and Technology's Cybersecurity Framework to address supply chain risk.[41] These efforts are already under way and could address the Commission's alleged concerns, if formalized.

As USTelecom warns, "[u]nilateral determinations made by the Commission in a vacuum would be dangerous and counterproductive."[42] For example, CTIA "urges the Commission to limit the reach of its new regime" because, although the Commission has communications-sector subject matter expertise, other agencies "are better suited to make national security policy and lead broad supply chain efforts[,]" in part because they have "significant expertise with which to lead on supply chain issues that reach beyond U.S. telecom carriers."[43]

Likewise, USTelecom urges the Commission to ensure that any action it takes in this proceeding should be made "in close coordination" with ongoing supply chain security activities within the Executive Branch.[44] NCTA similarly argues that "[a]ny further action taken by the Commission in this proceeding should be in concert and coordination with the multiple workstreams already underway across several different federal agencies and in Congress that address supply chain risks in ICTS."[45] The Telecommunications Industry Association ("TIA") also urges the Commission to "account for the fact that it is not acting alone or in a regulatory vacuum" and that "numerous ongoing (and probably future) government proceedings … will inform – and be informed by – how the Commission proceeds in this rulemaking."[46]

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41 CTIA Comments at 7-8.

42 USTelecom Comments at 9; *see also* NCTA Comments at 4 ("Numerous other federal efforts are already underway to address supply chain risks, and contradictory regulations could have serious unintended consequences.").

43 CTIA Comments at 9-10.

44 USTelecom Comments at 8.

45 NCTA Comments at 2.

46 TIA Comments at 5.

Nor should the Commission unilaterally adopt mandates that directly conflict with prior determinations made by the national-security experts within the Executive Branch, including determinations specifically with regard to Huawei equipment. AST Telecom, LLC d/b/a Bluesky notes that Team Telecom – the collection of Executive Branch agencies responsible for reviewing transactions and other license applications for national security, law enforcement, and foreign policy concerns – already has binding commitments from at least some providers regarding use of certain equipment (including Huawei equipment) which the Commission incorporates as conditions of licenses and transaction approvals.[47] It would be unreasonable for the Commission to require removal of equipment that has already been addressed in such prior determinations.

Similarly, Congress has, in some instances, shown a bipartisan interest in addressing national security concerns in telecommunications networks in a thoughtful and measured way, for example, through empowering the Federal Acquisition Security Council to using a risk-based approach to identify the types of equipment that may raise security concerns.[48] The clear and active efforts of the Executive Branch (and Congress) to identify and address risks to the communications network supply chain, and the potential for contradictory directives to carriers that may result from unilateral action by the Commission, counsel strongly against adoption of the proposed removal-and-replacement mandate, or to expansion of such a mandate to all telecommunications carriers.

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[47] Comments of AST Telecom, LLC d/b/a Bluesky, WC Docket Nos. 18-89, 19-351, 19-352, at 3-4 (filed Feb. 3, 2020) ("Bluesky Comments"). *See also* LATAM Comments at 7-8 (proposing that the Commission exempt companies that have national security mitigations with the U.S. government from the proposed removal and replacement mandate).

[48] NCTA Comments at 6 (noting the differences between the Commission's proposed removal mandate from enacted statutes and legislation pending before Congress).

III. Commenters Agree That The Proposed Rule is Overly Burdensome and Costly

As Huawei has previously stated, the Commission's proposed rule is overbroad and cannot be justified by a cost-benefit analysis.[49] Other commenters encourage the Commission to undertake a comprehensive review of the substantial costs its proposed rule would impose on American carriers and consumers—and in particular, costs that extend beyond the immediate cost of replacing equipment. These costs far outweigh any potential benefits of the proposal.

A. The Proposed Rule Will Result in Myriad Unintended Negative Consequences

The Commission's cost analysis cannot stop at merely assessing the direct cost of replacing equipment, which is only the tip of the iceberg. Instead, the Commission must carefully consider *all* costs associated with an equipment removal mandate, including the "potential unforeseen effects of upending the market for communications network equipment and components."[50] NCTA asserts that the proposed rule could result in: (1) raised network equipment costs that are passed onto consumers; (2) delayed network upgrades that translate to deferred innovation; and (3) possible distortions of the competitive market. Huawei has submitted substantial economic evidence and analysis supporting these assertions.

First, the proposed rule would cause carriers to incur significant costs that are difficult to adequately account for, and in turn difficult to fully compensate. For example, Triangle Communications asserts that rural carriers have declined in the U.S. market in part due to the "unjustifiable cost of equipment from [ ] now approved vendors" which are approximately 3 to 4

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[49] Huawei FNPRM Comments at 33-40.

[50] NCTA Comments at 11-12; *and see* USTelecom Comments at 11-12 (urging the Commission to avoid "negative unintended consequences" of the proposed rule).

times the original cost of concerned networks.[51] Similarly, PRTC notes that carriers would have to divert tremendous yet limited resources and contend with poor weather conditions and terrain in remote areas in order to even attempt to comply with the proposed rule.[52] PRTC also casts doubt on whether compliance is in fact achievable, and argues that the proposed rule could "significantly disrupt or possibly shu[tt]er communications networks on which the public rely."[53] And WTA warns that the Commission's rules may "result in a degradation of service experienced by the customers of the affected carriers."[54] Critically, the harms of the Commission's removal mandate, financial and otherwise, will ultimately be borne by the American consumer, and rural consumers in particular.

Second, the Commission's proposed rule would certainly delay or burden network upgrades, including deployment of 5G networks and services. As WTA points out, "[d]eploying first class communications in rural America is not an easy endeavor."[55] Instead of *upgrading* their telecommunications networks, carriers will need to focus their manpower and financial resources to replace equipment that covers "large swaths of land," construct and deploy towers in "hard-to-reach locations that may not be accessible at certain times of the year," and test and adjust new equipment to integrate it into their networks on the fly.[56] Furthermore, affected carriers would all be undertaking these efforts *at the same time*, thereby aggravating the demands for tower crews and equipment. These delayed upgrades would have far-reaching consequences for U.S.

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51 Triangle Communication Systems at 2.

52 PRTC Comments at 5, 9.

53 *Id.* at 5

54 WTA Comments at 4.

55 *Id.* at 5.

56 *Id.* at 4.

technological innovation and, correspondingly, its ability to keep pace in the race for 5G. LATAM urges the Commission to "minimize the impact on investments to continue to promote growth and innovation in the United States."[57]

Moreover, the impact of deferred innovation would not be limited to the telecommunications industry. Instead, the proposed rule could ultimately harm innovation and productivity gains in a number of telecommunications *enabled* sectors, including mobile banking, GPS, and e-commerce, which are critical to economic growth.[58] Huawei has submitted substantial economic evidence and analysis showing that the Commission's rule will cause harm to U.S. Gross Domestic Product to the tune of approximately $104 billion to $241 billion[59] and would depress employment by up to 50.3 thousand jobs in 2020.[60]

Third, several commenters raised concerns with the impact of the proposed rule on competition in the U.S. telecommunications equipment market. For example, Triangle Communication System states that "[b]y removing competition, the U.S. government is effectively increasing the costs for the replacement equipment and services."[61] Other parties have argued that there is a "paucity" of feasible, U.S.-based alternatives to Huawei, and in fact contend that a viable U.S. based equipment vendor is "currently not possible."[62] Indeed, rural carriers and economic experts alike have opined repeatedly that Huawei's presence in the U.S. market has provided much

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[57] LATAM Comments at 4-5.

[58] *See, e.g.*, Expert Report of Debra Aron, Huawei Ex Parte Written Submission, Attachment 1 (filed Oct. 11, 2019) ("Aron Report I") at ¶ 144.

[59] Aron Report I at ¶ 186.

[60] *Id.* at ¶ 194.

[61] Triangle Communication Systems Comments at 3.

[62] USTelecom Comments at 7; Triangle Communication Systems Comments at 3.

needed competition for the telecommunications market, and in particular for rural carriers.[63] And Huawei has submitted economic evidence and analysis demonstrating that even competitors with a relatively smaller market share provide competition that drives down prices.[64] Without a viable competitive alternative to Ericsson and Nokia, all carriers are likely to face higher equipment prices.

B. The Proposed Rule Requires the Removal of Equipment that Does Not Pose a Security Risk

The comments show that the proposed rule imposes unnecessary burdens, including because it requires carriers to remove all equipment by covered companies without regard to whether the equipment is actually capable of posing a security risk.[65] The Commission's proposal to require removal of Radio Access Network ("RAN") equipment and other inherently secure equipment is not just a costly proposal but is *the most* costly, irrational, and highly inefficient way to address alleged security risks, as it likely would "require the removal of a massive amount of equipment, much of which poses minimal or no risk"[66] and could require carriers to duplicate their networks before removing covered equipment.[67] Commenters such as PRTC and LATAM advocate against enacting the proposed rule at all, but stress that if the Commission insists on

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[63] *See* Competitive Carriers Association ("CCA") Comments (filed June 2, 2018) at Appendix: Declarations; Aron Report I; Huawei FNPRM Comments at Exhibit A, Expert Report of Debra J. Aron ("Aron Report II").

[64] *See* Aron Report I at ¶¶ 198, 210-12; Aron Report II at ¶¶ 75-77; Huawei Comments, Ex. F, Shampine Decl. at ¶ 20 (filed June 2, 2018); Huawei Reply Comments, Ex. D, Shampine Reply Decl. at ¶¶ 12-13 (filed July 1, 2018).

[65] *See, e.g.*, PRTC Comments; LATAM Comments; CTIA Comments.

[66] LATAM Comments at 3.

[67] *See* CCA Comments at 6 (explaining that carriers will need to secure funding for, acquire, and install new equipment before transitioning traffic away from covered equipment and ultimately removal of the equipment).

adopting an equipment removal requirement, it "do so in a risk-based manner, targeting core elements of a network, and avoiding an unnecessary and overly burdensome outright ban."[68] As Huawei has explained, RAN and other inherently secure equipment have little to no "decision making" capacity, and requiring removal and replacement of these kinds of equipment would expend significant financial resources (from USF contribution ratepayers and/or taxpayers) without a meaningful increase in network security.[69] Similarly, PRTC asks the Commission to ensure that the proposed rule does not cover lower risk equipment outside of a core network (such as antennae, wires, cables, modems, routers, or other non-critical elements of a network) and equipment not owned by carriers (such as customer premises equipment).[70]

The overbreadth of the Commission's proposed rule is glaringly apparent in other ways. The proposed rule would require the removal of ancillary equipment with no national security impact including end-user devices and handsets that are "thoroughly tested before introduction to the market."[71] Moreover, the proposed rule imposes significant burden on carriers by requiring that they remove and replace any *subcomponents* provided by a covered company, which could require the supplier to entirely redesign its equipment simply to accommodate an alternate component.[72]

The Commission should not adopt a rule that would impose such unreasonable and unnecessary costs without achieving any corresponding benefit.

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[68] LATAM Comments at 3.

[69] Huawei FNPRM Comments, at 47-48.

[70] PRTC Comments at 6; *and see* CTIA Comments at 10-11 (urging the Commission to adopt a risk-based approach with a focus on core network elements that are of most concern).

[71] USTelecom Comments at 13.

[72] CTIA Comments at 23-24; USTelecom Comments at 13 ("Replacing component parts in finished products could be tremendously challenging and complex, and therefore costly.").

IV. Conclusion

For the foregoing reasons, the Commission should not adopt the proposed rules and should terminate the Further Notice of Proposed Rulemaking.

Respectfully submitted,

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